

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FMC TECHNOLOGIES, INC., and FMC  
FOODTECH, INC., successors-in-interest to  
DESIGN SYSTEMS, INC. and STEIN, INC.,  
d/b/a STEIN-DSI,

Plaintiffs,

v.

JAMES EDWARDS and PROCESSING  
EQUIPMENT SOLUTIONS, INC.,

Defendants.

CASE NO. C05-946C

ORDER

This matter comes before the Court on (1) Plaintiffs' Motion To Compel (Dkt. No. 68); (2) Plaintiffs' Motion for Leave To Take more than Ten Depositions (Dkt. No. 88); (3) Plaintiffs' Motion To Compel Inspection (Dkt. No. 85); and (4) Defendants' Motion To Compel Discovery (Dkt. No. 106). Having considered the papers submitted by the parties on all four of these motions and finding oral argument unnecessary, the Court finds and rules as follows.

**I. BACKGROUND**

The facts of this case are outlined in numerous Orders of this Court (*see, e.g.*, Orders (Dkt. Nos. 42, 109, 113)). Plaintiffs originally sued Defendant Edwards and another individual, Darren Wattles in

1 state court (“FMC I”), alleging that they had stolen comprehensive drawings of Plaintiffs’ meat-portioner  
2 parts. After those defendants swore under oath that they did not have any of Plaintiffs’ drawings and  
3 failed to produce any drawings during discovery, the parties chose to settle the state court suit. FMC I  
4 defendant Darren Wattles later approached FMC and disclosed that he had, in fact, downloaded the  
5 drawings at issue and delivered them to James Edwards. In light of this new information, Plaintiffs  
6 brought suit again, this time in federal court, suing Defendant Edwards and the company that he and  
7 Darren Wattles had founded, Processing Equipment Solutions. Plaintiffs’ instant suit seeks either (1) to  
8 affirm the FMC I Settlement Agreement and obtain relief for fraud, conversion, unjust enrichment, and  
9 breach; or (2) total rescission of the FMC I Settlement Agreement and relief based on the original causes  
10 of action brought in FMC I. In the instant suit, a central factual dispute is whether the FMC I defendants  
11 lied during FMC I discovery; a central legal dispute is the effect of such conduct if it occurred.

## 12 **II. ANALYSIS**

13 At the outset, the Court finds that the parties have satisfied the meet-and-confer requirement of  
14 Federal Rule of Civil Procedure 37(a)(2) as to all issues resolved below.

### 15 **A. Plaintiffs’ Motion To Compel**

16 Plaintiffs seek to compel three categories of discovery in this motion: (1) tax returns and financial  
17 information, (2) portioner-related documents, software, advertising, and marketing materials, and (3) an  
18 additional Federal Rule of Civil Procedure 30(b)(6) (organizational) deposition.

19 As to the tax returns and financial information, Plaintiffs’ request is moot because Defendants  
20 have produced all of the requested documents. Thus, the Court need not address relevancy or privilege  
21 arguments. Nevertheless, Plaintiffs seek an order requiring Defendants to “certify” that all financial and  
22 tax documents requested have been produced. The Court finds that ordering a certification would be  
23 superfluous. Federal Rule of Civil Procedure 26(g) already requires signatures, which “constitute[] a  
24 certification that to the best of the signer’s knowledge, information, and belief, formed after a reasonable  
25 inquiry, the disclosure is complete and correct as of the time it is made.” FED. R. CIV. P. 26(g)(1); *see*

1 *also id.* R. 26(g)(2) (similar language regarding discovery requests, responses, and objections).

2 Furthermore, failure to properly respond to discovery requests is sanctionable under the Federal Rules.  
3 FED. R. CIV. P. 37(c). The Court reminds the parties that this Court may sanction dishonest discovery  
4 practices in a variety of ways, including excluding evidence, striking claims, and informing the jury of  
5 discovery behavior. Plaintiffs' request for a certification order is DENIED.

6 Plaintiffs' second request in this motion is for portioner-related documents, software, advertising,  
7 and marketing materials, which Plaintiffs maintain are necessary to analyze and prove their claims that  
8 Defendants stole Plaintiffs' trade secrets. Specifically, the machines (portioners) that Plaintiffs say have  
9 been duplicated by Defendants include a computer that scans and processes information about the size of  
10 chicken pieces ("nuggets," "strips," etc.) and constitutes the "brains" of the portioner machine. Plaintiffs  
11 seek information about Defendants' machines to see whether their machines have incorporated Plaintiffs'  
12 portioner "brains." Defendants oppose this request and claim that Plaintiffs merely are attempting to  
13 obtain *Defendants'* trade secrets by way of these discovery requests.

14 Federal Rule of Civil Procedure 26(b)(1) provides:

15 Parties may obtain discovery regarding any matter, not privileged, that is relevant to the  
16 claim or defense of any party, including the existence, description, nature, custody,  
17 condition, and location of any books, documents, or other tangible things and the identity  
18 and location of persons having knowledge of any discoverable matter. For good cause,  
the court may order discovery of any matter relevant to the subject matter involved in the  
action. Relevant information need not be admissible at the trial if the discovery appears  
reasonably calculated to lead to the discovery of admissible evidence.

19 FED. R. CIV. P. 26(b)(1). The Court may limit discovery if (1) it is "unreasonably cumulative or  
20 duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less  
21 expensive"; (2) there has been "ample opportunity by discovery in the action to obtain the information  
22 sought"; or (3) "the burden or expense of the proposed discovery outweighs its likely benefit, taking into  
23 account the needs of the case, the amount in controversy, the parties' resources, the importance of the  
24 issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues." *Id.*  
25 R. 26(b)(2).

1 The Court finds that Plaintiffs' request seeks relevant information that is reasonably calculated to  
2 lead to the discovery of admissible evidence. Whether Defendants' machines incorporate the designs of  
3 Plaintiffs' machines is central to this lawsuit. Plaintiffs must have access to such information. Further, as  
4 to Defendants' trade secret objections, the Court finds that the parties' stipulated Protective Order (Dkt.  
5 No. 39), as modified (*see* Order (Dkt. No. 76)) adequately addresses any confidentiality concerns. The  
6 Protective Order provides for an "attorneys'-eyes-only" production that limits disclosure of each party's  
7 trade secrets to attorneys and their staff, the Court and court personnel, and independent experts.  
8 Apparently, Defendants are concerned with one of Plaintiffs' experts who may access their trade secrets if  
9 this production is ordered. This expert is Andy Rudy, a former employee of Plaintiffs. In response to  
10 Defendants' objection, Plaintiffs have suggested excluding Mr. Rudy from the attorneys'-eyes-only group  
11 that normally would have access to such information. Therefore, Plaintiffs' request for portioner-related  
12 documents, software, advertising, and marketing materials is GRANTED with that restriction.  
13 Defendants must fully respond to Plaintiffs' Requests for Production Nos. 9, 10, and 13. Plaintiffs may  
14 not allow Mr. Rudy to have access to the information produced pursuant to this Order and must  
15 otherwise adhere to the stipulated Protective Order regarding confidential and/or attorneys'-eyes-only  
16 information.

17 Plaintiffs' final request in this motion is for leave to conduct more than one Rule 30(b)(6)  
18 deposition of PES. Plaintiffs seek to depose Defendant PES's representative—designated by Defendants  
19 as Defendant Edwards—twice in his *official* capacity to ensure that all discovery has been produced as  
20 represented by PES. Defendants oppose this request, arguing that the resulting minimum of three  
21 depositions of Mr. Edwards (because he also will be deposed once as an individual) is unduly  
22 burdensome. Because Plaintiffs may depose Mr. Edwards on two separate occasions in any case—once  
23 as an individual/defendant and once as a PES representative—the Court finds it unnecessary to allow an  
24 additional official-capacity deposition. Any follow up questions for Mr. Edwards in his capacity as  
25 representative of PES may be asked either before or after he is deposed in his capacity as an individual,

1 on the same date. Mr. Edwards may put on his “PES hat” or his “individual hat” at the same deposition  
2 and testify in both capacities, as long as it is made clear at the time of the examination in *which* capacity  
3 he is answering specific questions. Plaintiffs can meet their own needs by scheduling their depositions of  
4 Mr. Edwards to coincide with their need for discovery follow-up questions. An additional Rule 30(b)(6)  
5 deposition is therefore unnecessary and Plaintiffs’ request for one is DENIED.

6 **B. Plaintiffs’ Motion for Leave To Take more than Ten Depositions**

7 Plaintiffs seek leave to take more than ten depositions, requesting permission for both sides to  
8 take “as many depositions as may be reasonably necessary, subject to an outer limit of not more than 40  
9 depositions, plus expert depositions, without further leave of Court.” Defendants oppose these additional  
10 depositions, arguing expense and undue burden. Defendants also filed a Surreply (Dkt. No. 105),  
11 objecting to Plaintiffs’ Reply materials. The Court STRIKES all inappropriate Reply materials and again  
12 reminds the parties to adhere to the rules regarding the appropriate and allowable scope of evidence  
13 submitted in support of and arguments made in court pleadings. The Court has not considered any  
14 unallowable evidence in ruling on this motion.

15 Federal Rule of Civil Procedure 30(a)(2) requires a party to request leave of Court to take more  
16 than ten depositions. The reasonableness of the request is subject to the principles stated in Rule 26(b)(2)  
17 (quoted *supra* section II.A). In light of the numerous witnesses in this case, the expense of deposing out-  
18 of-state witnesses, and the course and complexity of discovery in this case, the Court finds that a limited  
19 number of additional depositions is justified. However, the request for 40 depositions is extreme. The  
20 Court finds it more appropriate to limit the total number of non-expert depositions to 30. Therefore,  
21 Plaintiffs may take no more than five depositions beyond the ten already allowed by Rule 30; and  
22 Defendants may take no more than five depositions beyond the ten already allowed by Rule 30.  
23 Accordingly, Plaintiffs’ request for leave to take more than ten depositions is GRANTED IN PART and  
24 DENIED IN PART.

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**C. Plaintiffs' Motion To Compel Inspection**

Plaintiffs seek an inspection of Defendants' premises to videotape a tour showing: (1) where Defendants' former employees hid drawings allegedly stolen from Plaintiffs (and thus to corroborate testimony about such theft); (2) the type of water jet cutting equipment, intelligent food processing equipment, and other food processing equipment that Defendants have (which goes to whether Defendants' machinery is the result of stolen drawings and plans); and (3) the general scope of Defendants' operations (to support Plaintiffs' argument that Defendants are not really the "little guy" as they claim).

Defendants' objections center on the burdens of an inspection and the danger of exposing Defendants' trade secrets, which would allow Plaintiffs access to information that could be used improperly in competition in the marketplace. Defendants also object to the presence of Darren Wattles and/or Diane Wattles at the inspection because they are former employees whose presence on the PES premises would cause "annoyance, embarrassment, oppression, and undue burden." Further, Defendants object to the limitless number of "experts" that Plaintiffs may try to bring along on the tour.

Federal Rule of Civil Procedure 34(a)(2) allows "entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b)." FED. R. CIV. P. 34(a)(2). The standards and scope of Rule 26(b) are quoted *supra* section II.A.

Allowing a Rule 34 inspection must be done with caution. However, appropriate safeguards and limitations can mitigate the dangers and burdens of inspections, while still allowing parties to discover relevant evidence. Here, the objectives cited by Plaintiffs are reasonable and it is clear that Plaintiffs seek relevant evidence. Further, to protect against the dangers and burdens often presented by premises inspections during discovery, Plaintiffs have proposed some limitations, such as: (1) only having one of the objected-to former employees attend (Diane Wattles *or* Darren Wattles); (2) inspection before or

1 after normal business hours; (3) allowing Defendants to remove all personnel from the premises  
2 beforehand; (4) allowing Defendants to remove all papers and drawings from view beforehand; (5)  
3 allowing no opening or inspecting of “drawers, files, closets, or other enclosures,” except to show the  
4 “crawl space” where the stolen drawings were allegedly hidden; and (6) limiting the machinery inspection  
5 to intelligent and/or water jet cutting equipment. In addition, the parties have a very restrictive protective  
6 order already in place that would categorize the inspection as attorneys’-eyes-only and allow only experts  
7 to see the trade-secret information. Finally, Plaintiffs suggest that the inspection be limited to a duration  
8 of no more than three hours and that Defendants’ counsel attend. The Court finds that adopting all of the  
9 proposed restrictions—including restrictions 1 through 6 enumerated above, the three-hour limit, and the  
10 attendance of defense counsel—and ensuring that the inspection retains its “attorneys’-eyes-only”  
11 designation are adequate measures to address Defendants’ concerns with the inspection. Therefore,  
12 Plaintiffs’ motion to compel an inspection of the PES premises is GRANTED, subject to the restrictions  
13 and limitations outlined *supra*.

#### 14 **D. Defendants’ Motion To Compel Discovery**

15 Defendants’ original motion sought four categories of discovery: (1) specific identification of the  
16 trade secrets that Defendants allegedly stole from Plaintiffs; (2) all documents that support Plaintiffs’  
17 breach and fraudulent inducement claims; (3) information about Plaintiff FMC’s communication with  
18 witness Darren Wattles; and (4) Plaintiffs’ profit and loss statements. In Defendants’ Reply materials,  
19 they reiterate their requests for specific identification of trade secrets and profit and loss statements  
20 (requests 1 and 4); Defendants do not specifically address the request for support of breach and  
21 fraudulent inducement claims (request 2), but they do incorporate discussion of fraud into request 1; and  
22 Defendants withdraw their request for information about communications with Mr. Wattles (request 3).  
23 Accordingly, the Court does not reach request 3 because it has been withdrawn. Nor does the Court  
24 address request 2 apart from request 1. The Court therefore rules only on requests 1 and 4.

25 Federal Rule of Civil Procedure 26(b) applies here, as quoted *supra* section II.A. Because such

1 information is highly relevant and essential to Defendants' ability to defend against this lawsuit, the Court  
2 finds that Plaintiffs must identify with particularity the trade secrets that it alleges Defendants stole,  
3 though not to the degree needed to *prove* the claims (as if on a motion for summary judgment).  
4 Accordingly, Defendants' request for trade-secret identification is GRANTED IN PART. Further, the  
5 Court acknowledges that Plaintiffs' arguments that they have not received enough information to answer  
6 this request completely may be well-founded. The discovery compelled by this Order likely will provide a  
7 large part of the information that Plaintiffs claimed they lacked when responding to Defendants' motion  
8 to compel. Therefore, Plaintiffs are ORDERED to identify with particularity the trade secrets that they  
9 claim have been stolen *and* to appropriately supplement such identification as discovery in this matter  
10 continues. Such identification should be responsive to the relevant Interrogatories and Requests for  
11 Production cited in the briefing on this issue, but does not need to rise to the summary judgment standard  
12 of proof. Further, trade-secret or other similar information shall be subject to the attorneys'-eyes-only  
13 protective order discussed *supra* sections II.A and II.C, in accordance with the parties' stipulation  
14 regarding such information. Again, the parties are reminded to adhere to the dictates of Rules 26(g) and  
15 37(c) in producing discovery.

16 As to Defendants' requests for FMC's profit and loss records, the Court finds that this  
17 information is relevant and discoverable. Accordingly, Defendants' request for such information is  
18 GRANTED. Plaintiffs must produce the information requested by Defendants' Interrogatory No. 6 (and,  
19 to the extent available but not already produced, any information responsive to Interrogatory Nos. 7, 8,  
20 and 9).

### 21 **III. CONCLUSION**

22 For the reasons set forth above:

23 (1) Plaintiffs' Motion to Compel (Dkt. No. 68) is GRANTED IN PART and DENIED IN PART  
24 for the reasons set forth in section II.A of this Order and under the conditions described therein;

25 (2) Plaintiffs' Motion for Leave To Take more than Ten Depositions (Dkt. No. 88) is GRANTED  
26 ORDER – 8



1 IN PART and DENIED IN PART for the reasons set forth in section II.B of this Order and under the  
2 conditions described therein;

3 (3) Plaintiffs' Motion To Compel Inspection (Dkt. No. 85) is GRANTED for the reasons set forth  
4 in section II.C of this Order and under the conditions described therein; and

5 (4) Defendants' Motion to Compel Discovery (Dkt. No. 106) is GRANTED IN PART for the  
6 reasons set forth in section II.D of this Order and under the conditions described therein.

7 SO ORDERED this 20th day of March, 2006.

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10 John C. Coughenour

11 United States District Judge  
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